IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8548 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVENDRABHAI JOITARAM PRAJAPATI & 4 - Applicant(s)
Versus
SHANKARBHAI MOHANBHAI PRAJAPATI & 1 - Respondent(s)

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Appearance :
MR MIG MANSURI for Applicant(s) : 1 - 5.
MR AK CHITNIS for Respondent(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/10/2007

ORAL JUDGMENT

1. Rule. Shri Chitnis, learned advocate waives service of rule on behalf of the respondent No.1 – original complainant and Shri M.R.Mengde,

learned APP waives service of rule on behalf of the respondent No.2 – State. With the consent of the learned advocates appearing on behalf of the respective parties, this matter is taken up for final hearing today.

2. By way of this application under section 482 of the Criminal Procedure Code, the petitioners herein – original accused have prayed for an appropriate order to quash and set aside the criminal complaint being criminal inquiry No.135 of 2007 filed by the respondent No.1 against the petitioners in the Court of learned JMFC, Ahmedabad (Rural).

3. Petitioner No.5 is the daughter-in-law of the original complainant – respondent No.1 herein. Petitioner No.1 is the father of the petitioner No.5 and the marriage of the petitioner No.5 was solemnized with one Brijeshkumar – son of the respondent No.1 – original complainant. Some disputes started between the petitioner No.5 and her husband and they were residing separately

and the petitioner No.5 was deserted from her in-laws place since 11.7.2005. That the petitioner No.5 gave an application to the Police Inspector, Sola Police Station, Ahmedabad on 19.1.2007 making a grievance with regard to ill-treatment and harassment. Thereafter, another application was given on 18.5.2007 to the Police Inspector, Sola Police Station, Ahmedabad that she wants and is ready to go to her in-laws place to live her marital life. It is the case of the petitioners that the petitioner No.5 was trying to save her marital life and went to her in-laws house on 19.7.2007, however, her husband and in-laws did not open the doors of their house, however, the petitioner No.5 managed to get entry into the house. It is the case on behalf of the petitioners that thereafter relatives and leading persons of their caste and community of both the families tried to settle the dispute and the elder brother of the respondent No.1 prepared in his own hand writing a compromise of divorce which was signed by the respondent No.1

and the petitioner Nos.1 to 4 and other relatives of the respondent No.1. It is the case on behalf of the petitioners that still they were ready and willing to give up the terms and conditions of the said compromise of divorce to see that the respondent No.5 stays with the family of the respondent No.1. It appears that instead of complying with the terms and conditions of the compromise of divorce arrived at, the respondent No.1 herein – original complainant filed a criminal complaint on 23.5.2007 before the learned JMFC, Ahmedabad (Rural) against the petitioners for the offence punishable under sections 384, 389, 511, 114 and 120(B) of the Indian Penal Code and in the said complaint, the learned JMFC, Ahmedabad (Rural) passed an order for inquiry under section 156(3) of the Criminal Procedure Code. Being aggrieved and dissatisfied with the same, the petitioners have preferred present application to quash and set aside the impugned complaint.

4. Today, when the matter is called out, learned

advocates appearing for the respective parties have submitted that parties have amicably settled the disputes and the respondent No.1 and his son – husband of the petitioner No.5 has agreed to pay Rs.3,30,000/- to the petitioner No.5 towards permanent alimony and the petitioner No.5 have agreed to accept the same. It is also agreed between the parties that there shall be a divorce between the petitioner No.5 and the son of the respondent No.1 – Brijeshkumar and for which H.M.P. No.1148 of 2007 is filed by the respective parties with consent which is pending in the Court of learned Principal Judge, Family Court, Ahmedabad. It is reported that an amount of Rs.3,30,000/- towards permanent alimony of the petitioner No.5 is already deposited by the respondent No.1 with this Court. A customary divorce has also taken place between the petitioner No.5 and her husband i.e. son of the respondent No.1. A deed of customary divorce-cum-settlement dated 15.10.2007 is produced on record, which is directed to be taken on record. Considering

above and when the respective parties have amicably settled the matrimonial disputes, it is requested to quash and set aside the impugned complaint. It is reported that the respondent No.1 – Shankarbhai Mohanbhai Pajapati is personally present in the Court. It is also reported that the petitioner No.1 – father of the petitioner No.5 is also personally present in the Court. Respondent No.1 has submitted that in view of the settlement entered into between the parties, he has no objection if the impugned complaint is quashed and set aside. Learned advocates appearing for the respective parties have relied upon the decision of the Hon'ble Supreme Court in case of ***B.S.Joshi & Others V/s. State of Haryana & Another*** reported in **2003(2) GLH 351** and have requested to exercise the powers under section 482 of the Criminal Procedure Code to quash and set aside the impugned complaint.

5. Considering the aforesaid facts and circumstances of the case, more particularly,

when the parties have settled matrimonial dispute amicably out of the Court and considering the decision of the Hon'ble Supreme Court in case of **B.S.Joshi & Others** (supra) and the stand taken by the respective parties, it appears to the Court that there are bleak chances of conviction and even the respondent No.1 – original complainant may not support the prosecution. Under the circumstances, it appears to the Court that to continue criminal proceedings against the petitioners by way of impugned complaint would be unnecessary harassment to them and it will not be in the interest of respective parties. Under the circumstances, it is a fit case to exercise powers under section 482 of the Criminal Procedure Code to quash and set aside the impugned complaint.

6. For the reasons stated above, petition succeeds. Impugned complaint being criminal inquiry No.135 of 2007 filed by the respondent No.1 against the petitioners pending in the Court of learned

JMFC, Ahmedabad (Rural) is hereby quashed and set aside. Petitioner Nos.1 and 5 are permitted to withdraw the amount of Rs.3,30,000/- deposited by the respondent No.1 pursuant to the order passed by this Court dated 27.9.2007. Office is directed to make the aforesaid payment of Rs.3,30,000/- by Account Payee Cheque in the name of petitioner No.5 and the said payment in favour of the petitioner No.5 would be towards full and final settlement of her claim against the respondent No.1 and his son towards future maintenance and the same would be treated as permanent alimony. Parties are directed to act as per the customary divorce-cum-settlement dated 15.10.2007. In the fact and circumstances of the case, learned Principal Judge, Family Court, Ahmedabad (Rural) is directed to decide and dispose of H.M.P. No. 1148 of 2007 at the earliest. As and when H.M.P. No.1148 of 2007 is disposed of, parties are directed to place on record of this case the certified copy of the judgment and order passed in H.M.P. No.1148 of 2007 to complete the record.

7. Rule is made absolute accordingly.

[M.R.Shah, J.]

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